

TESTIMONY - CPS/MADISON

Good morning ladies and gentlemen. I would like to thank Assemblyman Flynn for inviting us here today so that we can clear-up any questions there are concerning the handling of the CPS Chemical/Madison Industries case.

Let me start with an overview of this case and explain to you how we got where we are today. In early 1981, the DEP in conjunction with the City of Perth Amboy filed suit against CPS/Madison to determine liability, remedial relief, and damages under the Water Pollution Control Act and the Spill Compensation and Control Act. On October 16, 1981 a Superior Court Judge decided that CPS/Madison were liable for polluting the ground and surface water in the Pricketts Brook watershed. Pricketts Brook is apart of the Runyon watershed which is Perth Amboy's potable water supply. All of Perth Amboy's wells in this vicinity have been closed since the mid 1970's. The court found CPS responsible for organic chemical contamination and Madison responsible for inorganic, heavy metal contamination.

The court mandated a clean-up based on a conceptual plan recommended by the appointed court experts, Dames & Moore. This court ordered plan included the following elements: (1) construction of an all encompassing mile long slurry wall keyed into a continuous clay layer beneath the site which would act as a bathtub to contain the contamination; (2) relocation of Pricketts Brook away from the influence of both Companies; (3) decontamination wells located inside and outside the slurry wall; and (4) the dredging and disposal of sediments in Pricketts Pond. The responsibility for implementing this clean-up was delegated to the Department and the City of Perth



Amboy with the Companies paying a designated amount of money for each aspect of the plan.

Based upon the court order, in February 1982, Department personnel began a year long effort to design plans and specifications for the slurry wall and Brook relocation. This task involved a great deal of field work including a survey of the entire area, the installation and logging of numerous borings and monitoring wells by the Department drill rig which took many months in itself, and the sampling and recording of water levels in numerous monitoring wells. The resulting 68 pages of plans were drawn up by Department personnel. With the rapid evolution of the Superfund program, the Department elected to have its inhouse plans for remediation reviewed and modified by a professional engineering firm. Clearing authorization, bidding, and selections consumed the remainder of 1983 and half of 1984.

In the meantime, CPS/Madison had appealed the remedy ordered by the 1981 Superior Court decision to the Appellate Court. Due to the uncertainty of the outcome of the appeal process, it was appropriate to hold in abeyance any implementation of the court ordered remedy. On April 21, 1983 the Appellate Court upheld the initial decision with two important modifications:

1. The financial ceiling for the cost of clean-up was lifted; and
2. The companies were found joint and severably liable for the clean-up.

Further appeal by CPS/Madison to the Supreme Court was denied.

In May 1983 an alternative plan was submitted by Wehran Engineering on behalf of CPS. This initiated on-going negotiations with CPS/Madison to develop an agreement that would be as good as or better than the court ordered plan. These negotiations led to the submittal of two addenda to the original plan which were in response to the Department's concerns. Also, through these negotiations a very intensive sampling program was completed of the sediments in Pricketts Pond and Brook in March 1984. CPS/Madison paid for this very expensive program and new valuable data was collected. This data defined and delineated the contaminants of Pricketts Pond.

The alternative plan is a modification of the court ordered plan. It includes a 1000 ft. crescent shaped slurry wall located 1/3 of the way into Pricketts Pond, three decontamination wells pumping a total of at least 400 GPM to control and capture the contaminant plumes, discharge of the contaminated ground water to the MCUA, and the relocation of Pricketts Brook.

The Department has taken a dual track approach to initiate a clean-up. As we continue to negotiate with the Companies, we have also moved forward to implement the court ordered plan. In January 1984 a request for proposal was issued and the engineering consulting firm CH₂M Hill was hired to review the Department's clean-up design and all of the accumulated data. On completing task I (design and data review) of the contract in August 1984, CH₂M Hill submitted a report recommending modifications to the Department's design and a proposal to gather other needed field data (task II). Interestingly, the CH₂M Hill slurry wall modifications are consistent with those developed for the proposed alternative plan.

The Department has determined that the alternative plan has advantages over implementation of the court ordered plan including:

1. The alternative plan is a more active approach and will result in faster decontamination compared to the more passive "bathtub" approach.
2. The Companies remain fully liable for successful implementation of the plan.
3. The proposed alternative provides necessary financial assurances to insure the effective remediation of the groundwater.
4. Substantial delays due to additional litigation would be avoided.
5. The location of the slurry wall is in a more effective position in the alternative plan.
6. A third party consultant is provided for to assist the Department in evaluating the performance of the system when it becomes operational.

The process of public involvement was initiated with a meeting at the request of the CAC in July, 1983 with Director Gaston and other Division of Water Resources representatives. Staff members and attorneys attended subsequent meetings scheduled by the CAC during 1984 regarding the details of the case, the status of CH₂M Hill review, and the on-going negotiations with CPS/Madison. The most recent meetings with the CAC and attended by Director Gaston provided a frank exchange of outstanding issues and a copy of the proposed alternative plan for comment.

The Department has solicited comments on the alternative plan and the only negative comments received were from the CAC. In their November 29, 1984 letter the CAC stated that they were against the proposed plan but only very general comments were included. In the Department's December 6, 1984 letter to the CAC, it requested that they submit more specific comments and concerns which could be considered in our decision making process. In a February 4 letter from the CAC, they reiterated their objections, which to date remain unresolved.
